

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
WESTERN DIVISION

2006 JUL 12 A 9:17

JOANN PELLETIER
Plaintiff

v.

SANDRA TALBOT and

CHITRA PUBLICATIONS, et. al. ,
Defendants

:
: U.S. DISTRICT COURT
: DISTRICT OF MASS.
:
: CIVIL ACTION NO. 05-30109
: MAP
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:
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**BRIEF IN SUPPORT OF MOTION FOR LEAVE OF COURT TO
CAUSE A SUMMONS AND THIRD PARTY COMPLAINT TO BE
SERVED UPON THIRD PARTY DEFENDANT**

FACTS

Plaintiff filed an amended complaint against Defendants on February 24, 2006. Plaintiffs claim centers on an alleged copyright infringement of a quilt design and a pattern to create the quilt she has alleged she had created in 1993 which was copied by Defendant Talbot. Defendant Talbot was a student of Plaintiff and allegedly created a quilt which infringed on Plaintiff's copyrighted design and copyrighted pattern. In 2003 defendants Chitra Publications, Chariot Publishing, Inc., published a photograph of Talbot's quilt, and also created and published a pattern for making a quilt similar to Talbot's in its magazine. Defendant Talbot assured Defendants

Chitra Publications, Chariot Publishing, Inc. and Christiane Meunier d/b/a Moon Over Mountain that Talbot's design was her original design created using a traditional quilt block pattern in the public domain.

In 2004 Defendants Chitra Publications, Chariot Publishing, Inc. and Christiane Meunier d/b/a Moon Over Mountain used a copy of its photograph of Talbot's quilt and the pattern to create a similar quilt in a book which was published and distributed. Defendant Talbot again assured Defendants Chitra Publications, Chariot Publishing, Inc. and Christiane Meunier d/b/a Moon Over Mountain that Talbot's design was her original design of a quilt pattern in the public domain.

On June 21, 2006, during a deposition of Plaintiff, Defendants were given the opportunity to review Plaintiff's quilt and the sketches Plaintiff allegedly used to create her quilt and her written pattern to create a similar quilt. Defendants were also given the opportunity to review documents and sketches drafted by Plaintiff allegedly shown to Defendant Talbot.

Defendants Chitra Publications, Chariot Publishing, Inc. and Christiane Meunier d/b/a Moon Over Mountain now seek leave of court to join Talbot as a third party defendant as Talbot based on her representation or misrepresentations to said defendants may be liable for contribution for some or all damages which Plaintiff might recover from said defendants.

Defendant Talbot's deposition is scheduled to be taken by Plaintiff and said Defendants on July 20, 2006 in Springfield, MA.

ARGUMENT

Pursuant to Rule 14(a), Fed.R.Civ.P., the party seeking to bring in a third party must request leave of Court to serve the third-party complaint if the complaint was filed later than ten days after serving the original answer.

"A defendant, acting as a third-party plaintiff, may implead any non-party "who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff." Fed. R. Civ. P. 14(a)(emphasis supplied). If the defendant acts within ten days of submitting his answer, he may bring a third party into the suit without leave of court. Otherwise, the court's permission must be obtained. In that event, the determination is left to the informed discretion of the district court, which should allow impleader on any colorable claim of derivative liability that will not unduly delay or otherwise prejudice the ongoing proceedings." Lehman v. Revolution Portfolio, LLC, 166 F.3d 389, 393 (1st Cir.,1999).

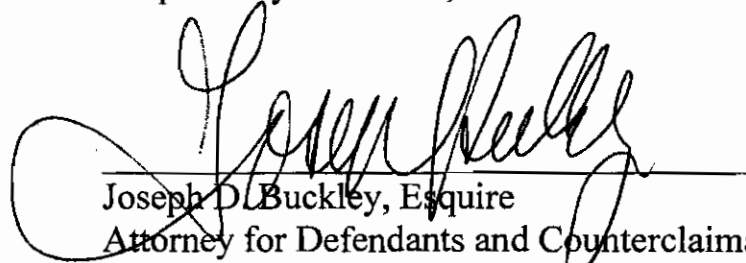
Defendants Chitra Publications, Chariot Publishing, Inc. and Christiane Meunier d/b/a Moon Over Mountain were brought into this case months after it was begun. They never had the opportunity until recently to review Plaintiff's actual quilt or the documents from which Plaintiff

allegedly created her design and quilt. Talbot is currently a named defendant. Defendants Chitra Publications, Chariot Publishing, Inc. and Christiane Meunier d/b/a Moon Over Mountain have a claim of derivative liability as against Talbot based on her repeated assurances that her quilt was created from an original design based on a traditional pattern.

Permitting impleader will not delay nor otherwise prejudice the present proceeding.

Defendants Chitra Publications, Chariot Publishing, Inc. and Christiane Meunier d/b/a Moon Over Mountain respectfully request that this Honorable Court enter an Order granting them leave of court to implead Defendant Talbot as a third party defendant.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joseph Buckley", is written over a horizontal line.

Joseph D. Buckley, Esquire
Attorney for Defendants and Counterclaimants
Chitra Publications, Chariot Publishing, Inc. and
Christiane Meunier d/b/a Moon Over Mountain
1237 Holly Pike
Carlisle, PA 17013-4435
JoeBLaw@aol.com
(717) 249-2448